



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: ECC-Insight, JV

File: B-404959; B-404959.3

Date: July 12, 2011

Alexander J. Brittin, Esq., Brittin Law Group, PLLC; Jonathan D. Shaffer, Esq., and Mary Pat Buckenmeyer, Esq., Smith Pachter McWhorter PLC, for the protester. Paul F. Khoury, Esq., and Brian G. Walsh, Esq., Wiley Rein LLP, for Parsons Infrastructure & Technology Group, Inc., an intervenor. V. Paul Clay, Esq., and Nate Cushman, Esq., Department of the Navy, for the agency. Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to evaluate proposals in accordance with the solicitation's evaluation factors is denied where the solicitation stated that an offeror's proposed level of effort would be evaluated under the technical approach evaluation factor.

DECISION

ECC-Insight, JV, of Burlingame and Anaheim, California, protests the rejection of its proposal and the award of contracts to six other firms under request for proposals (RFP) No. N62473-09-R-2623, issued by the Department of the Navy for environmental remediation services.¹

We deny the protests.

BACKGROUND

The RFP provided for the award of multiple, fixed-price indefinite-delivery/indefinite-quantity (ID/IQ) contracts for environmental restoration services at contaminated sites located at Navy, U.S. Marine Corps, and other government agency installations,

¹ The awardees are Arcadis US, Inc.; Innovative Technical Solutions, Inc.; Battelle Memorial Institute; CE2 Kleinfelder JV; AECOM-Environcon JV; and Parsons Infrastructure & Technology Group, Inc.

and would include sites on the Superfund National Priority List. RFP, Statement of Work, at 3. Offerors were informed that the contractors would have the opportunity to compete for task orders to provide environmental remediation services. See RFP at 36-39.

The RFP also provided that, concurrent with the award of the contracts, the agency would award a task order (TO 0001) to one contractor for soil hotspot characterization at Hunter's Point Shipyard, San Francisco, California. The RFP explained that the main focus for this work was

to systematically collect soil samples . . . surrounding specific "hotspot" locations to properly characterize the areal and volumetric extent of chemical contamination.

RFP at 67.

The RFP provided that awards would be made on a best value basis, considering the offerors' prices to perform TO 0001 and the following technical evaluation factors (which are of equal importance): past performance, specialized experience, contract management, technical approach for TO 0001, and commitment to socio-economic programs. Price was stated to be "slightly less important" than any one of the other evaluation factors, and the combined weight of the technical factors was stated to be significantly more important than price. RFP at 113.

Offerors were also informed that the agency intended to award the contracts without conducting discussions. Id. The RFP further provided that proposals that were evaluated as having a deficiency in meeting stated solicitation requirements or performance objectives would not be eligible for award unless the deficiency was corrected through discussions.² Id.

With respect to the technical approach factor, the RFP identified in section M a number of areas that the agency would evaluate to assess the viability of an offeror's proposed approach to performing the task order, including the proposal's "technical approach breakdown." RFP at 118. As part of the proposal submission requirements (in section L of the RFP), offerors were instructed to

[p]rovide a technical approach breakdown proposal by tasks, level of effort, and resources that demonstrate your understanding and analysis of the project work requirements. This proposal shall include labor mix, man hours, material, and equipment for prime and

² The RFP defined a deficiency to be a material failure to meet a government requirement or a combination of significant weaknesses that increases the risk of unsuccessful contract performance to an unacceptable level. RFP at 113.

any proposed subcontractors. The proposal breakdown shall be submitted in an Excel Spreadsheet, at a level of detail sufficient to validate your understanding of this technical requirement. Do not include rates, costs, or prices with your technical proposal. Proposals that contain rates, costs, and or prices in the technical proposal may be rejected. A copy of this technical approach breakdown proposal with associated cost details shall be submitted with the price proposal under [the price factor].

RFP at 107 (emphasis in original). Offerors were informed that this information would be used to evaluate the proposed technical approach for the task order under the evaluation factor. RFP at 106.

The Navy received 11 proposals, including the protester's. ECC-Insight's technical proposal was evaluated as having a deficiency under the technical approach factor that caused the firm's proposal to be assessed as marginal overall. See Agency Report (AR), Tab 6, Business Clearance Memorandum, at 14, 31. Specifically, the agency found under this factor that ECC-Insight had proposed too few labor hours to accomplish the approach described in its proposal for TO 0001. Id.; see also AR, Tab 4, Technical Evaluation Board Report, at 21. Because, as provided for by the RFP, the agency decided to make awards without conducting discussions, the protester's proposal was rejected as unacceptable.³ AR, Tab 6, Business Clearance Memorandum, at 14.

Following notification of the rejection of its proposal and the awards to the other firms, ECC-Insight received a debriefing, at which the protester was provided with a summary of the agency's rationale for award, including the agency's determination that ECC-Insight's proposal was ineligible for award because of the deficiency assessed under the technical approach factor.⁴ AR, Tab 10, Debriefing Document, at 2, 9-10. ECC-Insight then filed this protest.

³ The agency also found that ECC-Insight's proposed price was unrealistically low. Specifically, ECC-Insight proposed the lowest price among the 11 firms, which the Navy found was 70 percent less than the independent government estimate and 68 percent less than the average proposed price. See AR, Tab 5, Price Evaluation Report, at 6.

⁴ ECC-Insight was provided with a 12-page document, which included its technical evaluation, at the start of its debriefing; the protester was required to return the document at the conclusion of the debriefing.

DISCUSSION

ECC-Insight complains that the Navy did not evaluate its proposal in accordance with the stated evaluation criteria. Specifically, the protester argues the RFP did not provide for the evaluation of the firm's proposed level of effort under the technical approach factor.⁵

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. In this regard, a solicitation must inform offerors of the basis for proposal evaluation, and the evaluation must be based on the factors and significant subfactors identified in the solicitation. See Federal Acquisition Regulation §§ 15.304(d), 15.305(a); see also Sikorsky Aircraft Co.; Lockheed Martin Sys. Integration-Owego, B-299145 et al., Feb. 26, 2007, 2007 CPD ¶ 45 at 4.

Here, the solicitation specifically informed offerors that the agency would evaluate their technical approach breakdown under the technical approach factor. See RFP at 118. The solicitation also specifically informed offerors that the information submitted under section L of the solicitation would be used to evaluate the offeror's technical approach under the evaluation factor. RFP at 106. Although the RFP did not further define technical approach breakdown under the section M evaluation factors, offerors were instructed under section L to provide their level of effort under this factor and that the offerors' submissions should be sufficiently detailed to validate their understanding of the technical requirements. See RFP at 107. Furthermore, the RFP specifically stated that the information would be evaluated. RFP at 106. There is simply no merit to the protester's argument that there is no "nexus" between the section M evaluation factor and the section L instructions for information to be submitted under that factor. In sum, we find that the agency's consideration of ECC-Insight's level of effort under the technical approach factor was in accord with the solicitation's stated criteria.

The protest is denied.

Lynn H. Gibson
General Counsel

⁵ Following receipt of the agency's report, ECC-Insight raised several supplemental protest grounds, including that the agency, in reviewing the protester's level of effort, had failed to consider certain subcontractor hours. We dismissed these supplemental protest grounds as untimely because ECC-Insight learned the basis of these protest grounds in its debriefing, but did not raise these issues in its initial protest, which was filed within 10 days of the debriefing.